

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE



Applicant(s): Ralph A. Reisfeld et al.)
Application No. 10/090,183)
Filed: March 2, 2002) Group Art Unit: 1636
For: DNA VACCINE AGAINST)
PROLIFERATING ENDOTHELIAL)
CELLS AND METHODS OF USE)
THEREOF)
Examiner: Michael D. Burkhart) Attorney Docket No. TSRI 829.0

RESPONSE UNDER RULE 116

Mail Stop AF
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

This communication is in response to the Office Action dated 24 February 2005 on the above-identified application. Reconsideration of this application is requested. Applicants also hereby request a Pre-Appeal Brief Review. Form PTO/SB/33 accompanies this Response.

Claims 1, 2, 4-8, 10 and 32-34, inclusive, are under consideration. The rejection of these claims under 35 U.S.C. 112, first paragraph, as lacking enablement is not warranted, and is hereby traversed.

A patent specification must be enabling so that one skilled in the art would be able to make and use the invention as claimed after reading the specification. In re Vaeck, 947 F.2d 488, 495, 20 U.S.P.Q.2d 1444 (Fed. Cir. 1991). This is a question of law. M.P.E.P. §2164.01 (8th ed. 2001). However, applicants are not required to disclose every species that is claimed, even in an unpredictable art. In re Vaeck, 947 F.2d at 496, 20 U.S.P.Q.2d at 1445.

The Examiner himself has recognized at page 4 of the Office Action dated 26 August 2004, and at page 5 of the present Office Action, the level of skill in this particular field of art is high. Thus, the working examples, data, and teachings contained in the